

IN THE DISTRICT COURT OF SANPETE COUNTY, STATE OF UTAH

GUNNISON-FAYETTE CANAL COMPANY,
A Utah Corporation,

Plaintiff,

-vs-

GUNNISON IRRIGATION COMPANY,
A Utah Corporation,

Defendant.

AMENDED COMPLAINT

Civil No. 5444

Angela J. Jorgensen
Erna S. Nielson

Leave of the Court having been first had and obtained the Plaintiff,
by this Amended Complaint, complains of the Defendant and for cause of action
alleges:

1. That the Plaintiff is a Utah corporation having its principal place of business in Sanpete County, State of Utah, and is organized for the purposes of holding, owning, administering and distributing to its stockholders water for irrigation purposes.
2. That the Defendant is a Utah corporation with its principal place of business in Sanpete County, Utah.
3. That the Plaintiff is the owner of certain rights to divert and use water awarded to it by an adjudication in the case of Richlands Irrigation Company, a corporation, Plaintiff, vs. Westview Irrigation Company, a corporation, et al., Defendants, Case No. 843 in the Fifth Judicial District Court of the State of Utah in and for Millard County in which proceeding both the Plaintiff and the Defendant as well as the predecessor corporations which merged into and are now constituents of the Defendant corporation appeared generally as parties to the litigation.
4. That among the waters decreed to Plaintiff is that right appearing on Page 198 of the Progress Printing Edition of the final decree emerging from the litigation identified in the next preceding paragraph, which decree is commonly known and will hereinafter be referred to as the "Cox Decree", which right as described on Page 198 awards to Plaintiff 40 cubic feet per second of water yielded

by the Sanpitch River above the intersection of Gunnison-Fayette Canal and Sanpitch River to be used from March 1st to October 1st on lands under the Gunnison-Fayette Canal system.

5. That Highland Canal Company, referred to in the Cox Decree as a recipient of certain water rights, was merged into Defendant, Gunnison Irrigation Company, and Defendant as a portion of its aggregate entitlement to water from the Sanpitch River is successor to and claims the right appearing on Page 167 of the same edition of the Cox Decree. However, a flow of 25 c.f.s. of the 40 c.f.s. of water awarded to Plaintiff on Page 198 ~~is~~ decreed with a priority over the right of Highland Canal Company to divert water from Six Mile Creek and Twelve Mile Creek, which creeks are tributary to the Sanpitch River which is tributary to Sevier River and the provision subordinating the right of Highland Canal Company, Inc., to the rights of Plaintiff reads as follows:

IRRIGATION: (C) * * * (2) Twelve Mile Creek at a point South 46°48' West 750 feet from the Northeast Corner of the Southwest Quarter of the Northeast Quarter of Section 32, Township 18 South, Range 2 West, into the Highland No. _____ Canal.

It is provided, however, that all of the rights of the Highland Canal Company to the use of water from Sanpitch River and its tributary Six Mile Creek and Twelve Mile Creek are subject to the right of the Gunnison-Fayette Canal Company to 25 c.f.s. out of the 40 c.f.s. awarded to said Gunnison-Fayette Canal Company.

6. That since Highland Canal Company, Inc., the distributee of the foregoing award, is one of the constituent corporations having been merged into Gunnison Irrigation Company, ~~therefore~~ the rights which Gunnison Irrigation Company, the Defendant, derives by being successor to Highland Canal Company's rights under the decree are expressly made subject and subordinated to the rights of the Plaintiff appearing on Page 198 of the printed edition of said decree.

7. That in years last past the Defendant, Gunnison Irrigation Company, has deprived Plaintiff of its water decreed under Page 198 of the Cox Decree by wrongfully diverting the water from Six Mile Creek and from Twelve Mile Creek into ditches and canals of the Defendant without regard both to the priority of Plaintiff

over Highland Canal Company's decreed right and without regard to Plaintiff's entitlement to the remainder of the 40 cubic feet of water per second awarded Plaintiff after the other rights are filled. That the diversions into ditches and canals of the Defendant without regard to those rights and that priority have prevented the waters to which Plaintiff was and is entitled from reaching the intersection of the Sanpitch River with the canal of Gunnison-Fayette Canal Company, the place of Plaintiff's diversion;

8. That the right of the Plaintiff to 40 c.f.s. of water is subordinate to the rights of Defendant when there is insufficient water in the Sanpitch River to satisfy the last 15 c.f.s. of water awarded to Plaintiff on Page 198 of the decree; however, at all times the right of Plaintiff to 25 c.f.s. is prior to any rights of Defendant by virtue of the award to Plaintiff on Page 167 of the Cox Decree establishing a priority in favor of Plaintiff and subordinating the rights of the Defendant to those rights of the Plaintiff as is set out hereinabove in Paragraph 5; but further, during periods of high water Plaintiff is entitled to the entire 40 c.f.s. of water provided all rights are filled to their decreed capacity whereupon Plaintiff is entitled to 25 c.f.s. before any water from Twelve Mile or Six Mile Creek is delivered to Defendant derived through the award to Highland Canal Company, Inc., and is entitled to 15 c.f.s. after all other rights are filled.

10. That within the past four years the Defendant has wrongfully deprived the Plaintiff of water in the following amounts and volumes by diverting water upstream refusing to recognize the rights and priorities of the Plaintiff and by depleting the flow of Sanpitch River to no flow whatsoever at Plaintiff's diversion point:

5,000 acre feet in the year 1965

500 acre feet in the year 1964

500 acre feet in the year 1963

500 acre feet in the year 1962

For a total of 6,500 acre feet which has a value of \$20.00 per acre foot and Plaintiff has been damaged thereby in the amount of \$130,000.00

11. That Plaintiff has made repeated demand upon the Defendant for delivery to it of the water decreed to Plaintiff under the Cox Decree and Defendants have refused and continue to refuse to deliver any water to Plaintiff at the confluence of the Sanpitch River and the Plaintiff's canal in Sanpete County and that the Plaintiff is suffering irreparable harm, injury and damage for which Plaintiff cannot be compensated in money; that the Plaintiff and its stockholders will suffer irreparable damages for which they cannot be compensated in money by reason of the fact that lands under cultivation and irrigation to which water available under the Cox Decree should be applied cannot be irrigated to produce crops and the land itself will suffer irreparable harm, injury and damage by not having water applied thereto and all the damages which will accrue will not be determinable nor liquidatable through computation but the total damages cannot be assessed for many years yet to come and the Plaintiff is entitled to an Injunction Pendente Lite preventing and restraining the Defendant, its agents or officers, watermasters and ditch riders from depriving the Plaintiff of its decreed water right directing all officers or officials having in their charge the responsibility to administer said stream to deliver to the Plaintiff at the confluence of Plaintiff's canal and the Sanpitch River 40 c.f.s. of water until such time as the flow of the Sanpitch River recedes below the prior primary rights, then to accord to Plaintiff 25 c.f.s. of water at all times until the other rights are filled and thereafter to award Plaintiff, Gunnison-Fayette Canal Company, its additional right up to a total of 15 c.f.s.

WHEREFORE, Plaintiff prays Judgment as follows:

- A. For damages in the sum of \$130,000.00.
- B. For a Judgment of this Court adjudicating and decreeing that the Plaintiff is entitled to a delivery at the confluence of the Sanpitch River and the Plaintiff's canal 40 c.f.s. of water to be accorded a priority making Plaintiff

entitled to 25 c.f.s. with a priority over any rights of Defendant claimed as successor to Highland Canal Company and that the Defendant is limited to the flow rights expressed in the decree and any surplus water shall go to make up the total and additional right of Gunnison-Fayette Canal Company found on Page 198 of the decree.

OLSEN AND CHAMBERLAIN

By _____

Attorneys for Plaintiff
Address: 76 South Main
Richfield, Utah

Served the within and foregoing Amended Complaint upon the Defendant by mailing a full, true, and correct copy thereof to its Attorney, Macoy A. McMurray, McKay and Burton, Attorneys At Law, Newhouse Building, Salt Lake City, Utah, U. S. Mail, Postage Prepaid, this 10th day of January, 1966.

Ken Chamberlain